

The complaint

Mrs H – who is also complaining on behalf of the estate of her late husband, Mr H – feels that Santander UK Plc unfairly applied charges and interest to her account when she was experiencing financial difficulties.

What happened

Mrs H complained to Santander about unarranged overdraft charges and interest applied to her account since at least 2010. She says the charges significantly affected her and Mr H's financial position and that the charges have continued to affect her.

Santander looked at Mrs H's complaint, it said that the charges had been applied fairly.

One of our adjudicators looked into Mrs H's concerns, she explained that any complaint about charges applied from before 2013 had been brought to us too late. She also explained that she didn't think Santander had acted unfairly in applying the charges to Mrs H's account from 2013 onwards. Mrs H disagreed and so the complaint was passed to an ombudsman for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The rules I must apply say that, where a business doesn't agree, I can't look at a complaint made more than six years after what's being complained about happened, or if later, more than three years after the complainant knew, or should reasonably have known, that they had reason to complain. This is set out in Dispute Resolution rule 2.8.2R which can be found online.

Mrs H has complained about charges applied to her account from at least 2010 onwards. This means that Mrs H had, at least, six years from the date the charges were added in order to complain. So, for example, any charges applied between 2010 and September 2013 would have had to be complained about by between 2006 and September 2019. Mrs H didn't complain until October 2019, so she complained more than six years after some of the events she is complaining about.

But DISP 2.8.2R (2)(b) can potentially provide a consumer with longer than six years to complain, as long as they complained within three years of when they were aware, or they ought reasonably to have been aware, they had cause to. So I've considered whether DISP 2.8.2R (2)(b) provides Mrs H with longer to complain here.

I think that in order for me to find that Mrs H knew, or ought reasonably to have known, that she had cause to complain, I need to be satisfied that she was aware the charges were being applied, knew that those charges were contributing to her financial difficulties, and knew that it was Santander who was responsible for applying the charges.

Mrs H's statements would have set out the charges she's unhappy with. So I think that she would have been aware of the charges that Santander was applying to her account at the time. And she'd have been aware of her financial circumstances during that period of time too, so she'd have known whether she was able to afford to pay the charges. As this is the case, I think that Mrs H also ought to have known whether the charges were too much or causing her difficulty. And I think she'd have known that Santander was responsible for applying those charges too. So I think Mrs H would have known she had cause to complain as soon as the charges were applied, which means the three-year rule doesn't provide Mrs H with longer to complain overall. And with this in mind, I think that her complaint about charges from before October 2013 was made too late.

I can look at a complaint made outside of the time limit if I'm persuaded that this was because of exceptional circumstances. But Mrs H hasn't detailed any specific exceptional circumstances that I think would have stopped her complaining earlier, so I don't think exceptional circumstances were responsible for the delay.

I can though, look at charges applied to Mrs H's account from October 2013 onwards.

We've set out our general approach to complaints about charges applied to overdrafts - including the key rules, guidance and good industry practice - on our website. And I've thought about this when deciding Mrs H's complaint.

Having considered everything provided, I've decided not to uphold Mrs H's complaint about the charges applied from late 2013 onwards. I'll explain why.

Before I go any further, I want to be clear in saying that I haven't considered whether the various amounts Santander charged Mrs H over the years were fair and reasonable. Ultimately how much a bank charges for services is a commercial decision. And it isn't something for me to get involved with.

That said, while I'm not looking at Santander's charging structure per se, it won't have acted fairly and reasonably towards Mrs H if it continued to apply any interest, fees and charges to her account – and didn't offer any other assistance – in circumstances where it was aware, or it ought fairly and reasonably to have been aware, that she was experiencing financial difficulty. So I've considered whether there were instances where Santander didn't treat Mrs H fairly and reasonably.

I don't think that Santander did treat Mrs H unfairly or unreasonably though. Looking at her account statements, I can't see that there were any obvious signs of financial difficulties that should have flagged to Santander that Mrs H might need some help.

I want to be clear here that I'm not saying Mrs H wasn't in financial difficulties, but while I accept that Mrs H was using her overdraft regularly, the amount being credited to the account each month didn't indicate that there was no reasonable prospect of her seeing a credit balance at any stage either. Indeed, the overdraft was regularly repaid by credits to the account. So I don't think this was enough to flag to Santander that it ought to review her account in more detail, or that should have alerted Santander to any potential financial difficulty. So, in these circumstances I don't think that it was unreasonable for Santander to proceed with adding the interest, fees and charges it did.

I appreciate that this will be very disappointing for Mrs H, but I'm satisfied that Santander hasn't treated her unfairly, and so I don't think it needs to do anything more.

My final decision

For the reasons I've explained, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and the estate of Mr H to accept or reject my decision before 16 February 2022.

Sophie Mitchell
Ombudsman